

(iii) Notifies the requestor of the full amount due until HCFA receives payment of this amount; and

(iv) Notifies the requestor of the need for expert advice until HCFA receives the expert advice.

(d) After HCFA has notified the requestor of the full amount owed and has received full payment of that amount, HCFA issues the advisory opinion and promptly mails it to the requestor by regular first class U.S. mail.

[63 FR 1657, Jan. 9, 1998]

§411.382 HCFA's right to rescind advisory opinions.

Any advice HCFA gives in an opinion does not prejudice its right to reconsider the questions involved in the opinion and, if it determines that it is in the public interest, to rescind or revoke the opinion. HCFA provides notice to the requestor of its decision to rescind or revoke the opinion so that the requestor and the parties involved in the requestor's arrangement may discontinue any course of action they have taken in accordance with the advisory opinion. HCFA does not proceed against the requestor with respect to any action the requestor and the involved parties have taken in good faith reliance upon HCFA's advice under this part, provided—

(a) The requestor presented to HCFA a full, complete and accurate description of all the relevant facts; and

(b) The parties promptly discontinue the action upon receiving notice that HCFA had rescinded or revoked its approval, or discontinue the action within a reasonable "wind down" period, as determined by HCFA.

[63 FR 1657, Jan. 9, 1998]

§411.384 Disclosing advisory opinions and supporting information.

(a) Advisory opinions that HCFA issues and releases in accordance with the procedures set forth in this subpart are available to the public.

(b) Promptly after HCFA issues an advisory opinion and releases it to the requestor, HCFA makes available a copy of the advisory opinion for public inspection during its normal hours of

operation and on the DHHS/HCFA web site.

(c) Any predecisional document, or part of such predecisional document, that is prepared by HCFA, the Department of Justice, or any other Department or agency of the United States in connection with an advisory opinion request under the procedures set forth in this part is exempt from disclosure under 5 U.S.C. 552, and will not be made publicly available.

(d) Documents submitted by the requestor to HCFA in connection with a request for an advisory opinion are available to the public to the extent they are required to be made available by 5 U.S.C. 552, through procedures set forth in 45 CFR part 5.

(e) Nothing in this section limits HCFA's obligation, under applicable laws, to publicly disclose the identity of the requesting party or parties, and the nature of the action HCFA has taken in response to the request.

[63 FR 1657, Jan. 9, 1998]

§411.386 HCFA's advisory opinions as exclusive.

The procedures described in this subpart constitute the only method by which any individuals or entities can obtain a binding advisory opinion on the subject of a physician's referrals, as described in §411.370. HCFA has not and does not issue a binding advisory opinion on the subject matter in §411.370, in either oral or written form, except through written opinions it issues in accordance with this subpart.

[63 FR 1658, Jan. 9, 1998]

§411.387 Parties affected by advisory opinions.

An advisory opinion issued by HCFA does not apply in any way to any individual or entity that does not join in the request for the opinion. Individuals or entities other than the requestor(s) may not rely on an advisory opinion.

[63 FR 1658, Jan. 9, 1998]

§411.388 When advisory opinions are not admissible evidence.

The failure of a party to seek or to receive an advisory opinion may not be introduced into evidence to prove that